IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 14TH NOVEMBER 2006 / 23RD KARTHIKA 1928

Crl.Rev.Pet.No. 3954 of 2006()

CRA.111/2005 of SESSIONS COURT, PATHANAMTHITTA
ST.223/2003 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

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REVN. PETITIONER/APPELLANT/ACCUSED:

CHANDRASEKHARAN NAIR,
KIZHAKKEKARA VEEDU, P.O. KUMBAZHA,PATHANAMTHITTA.

BY ADV. SRI.PHILIP M.VARUGHESE
SRI.S.SANIL

RESPONDENTS/RESPONDENT/COMPLAINANT:

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1. VARGHESE GEORGE, S/O. GEORGE,
AMAYIL PUTHENPURAYIL HOUSE, P.O. KUMBANADU,
KOIPURAM, PATHANAMTHITTA DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. KAMAPPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J

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Crl. R.P. No. 3954 OF 2006
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Dated this the 14th day of November, 2006

ORDER

The petitioner who is the accused in S.T. No. 223/2003 on the file of the Court of the Chief Judicial Magistrate, Pathanamthitta was found guilty for the offence under Section 138 of the Negotiable Instruments Act and he was sentenced to undergo simple imprisonment for 3 months and to pay a fine of Rs.50,000/- and in default to undergo simple imprisonment for one month. The trial court also directed that out of the fine amount, Rs. 45,000/- shall be given to the complainant as compensation under Section 357(1) of the Code of Criminal Procedure. The petitioner challenged the conviction and sentence in appeal as Crl. Appeal No. 111 of 2005 on the file of the court of Session, Pathanamthitta. The appellate court confirmed the conviction, but modified the sentence as imprisonment till the rising of the court and to pay a fine of Rs.40,000/- with default sentence to undergo simple imprisonment for two months. It was also held that if the fine is

realised it shall be paid to the complainant as compensation under Section 357(1) of the Code of Criminal Procedure.

2. The case of the complainant is that the accused owed Rs.40,000/- to him and in discharge of the debt, the accused issued Ext. P1 cheque in favour of the complainant. The cheque was dishonoured on presentation. Though Ext. P5 notice was sent to the accused, he did not pay the amount. No reply notice was also sent by the accused. The receipt evidencing the transaction between the complainant and the accused was produced before the trial court and marked as Ext. P2. Thus, it is established that the cheque was issued in discharge of the liability towards the complainant. The trial court took note of the fact that no reply was sent to Ext. P5 notice and that no defence evidence was adduced by the accused. The presumption under Section 139 of the Act was also drawn by the trial court and the accused was found guilty of the offence. The appellate court also considered the contentions and evidence in detail and concurred with the view taken by the trial court. There is no error, illegality or impropriety warranting interference in revision under Section 397 of Code of Criminal Procedure.

3. The appellate court has modified the sentence and substantive sentence is only imprisonment till the rising of the court. There is no scope for interference in sentence as well. However, the learned counsel for the petitioner submits that the accused would find it impossible to deposit the fine amount and the result would be his imprisonment for two months. It was also pointed out that in such an event the second respondent/complainant would not have the benefit of receiving that amount as compensation under Section 357(1). Since no interference is being made in the conviction, I do not think that notice to the first respondent is necessary. The conviction and sentence as imposed by the appellate court are confirmed. However, the petitioner is granted three month's time to pay the fine amount. The petitioner shall appear before the trial court on 18/12/2006 to suffer the imprisonment till the rising of the court and shall continue to appear as may be directed by the trial court.

K.T.SANKARAN,
JUDGE

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